

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

JO ANN HOWARD &  
ASSOCIATES, P.C., *et al.*,

Plaintiffs,

vs.

J. DOUGLAS CASSITY, *et al.*,

Defendants.

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Case No. 4:09CV01252 ERW

**MEMORANDUM AND ORDER**

This matter comes before the Court on Defendants David R. Wulf; and Wulf, Bates & Murphy, Inc.’s (collectively referred to as “Wulf Defendants”) Motion to Dismiss [ECF No. 930], seeking dismissal of Counts 5 and 11 of Plaintiff’s Third Amended Complaint [ECF No. 916].

In their Motion, Wulf Defendants state that Counts 5 and 11 of Plaintiff’s Third Amended Complaint are identical to the Count 5 and Count 11 contained in Plaintiff’s Second Amended Complaint [ECF No. 594], which were dismissed as to the Wulf Defendants by Order of this Court on July 28, 2011 [ECF No. 745].

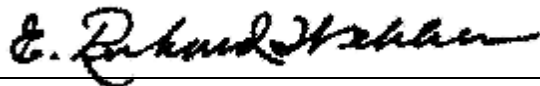
In their Response, Plaintiffs state they do not intend to reassert any claims that were dismissed by the July 28, 2011 Order, and that they have not reasserted the claims in Counts 5 and 11 against the Wulf Defendants [ECF No. 945]. Nevertheless, Counts 5 and 11 of the Third Amended Complaint are identical to Counts 5 and 11 of the Second Amended Complaint, the Third Amended Complaint states that Counts 5 and 11 are brought against the “Rico Defendants,” and paragraph 86 of the Complaint indicates that the parties to whom the term “Rico Defendants” refers includes the Wulf Defendants.

The Court concludes that Wulf Defendants are entitled to dismissal of Plaintiffs' Count 5 for Fraudulent Omissions/Nondisclosure and Plaintiff's Count 11 for violations of the Consumer Protection Act, for the reasons previously discussed in this Court's July 28, 2011 Order [ECF No. 745].

Accordingly,

**IT IS HEREBY ORDERED** that Wulf Defendants' Motion to Dismiss [ECF No. 930] is **GRANTED**. Count 5 and Count 11 of Plaintiff's Third Amended Complaint [ECF No. 916] are dismissed as to Wulf Defendants.

Dated this 30th day of July, 2012.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written above a horizontal line.

E. RICHARD WEBBER  
SENIOR UNITED STATES DISTRICT JUDGE